

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:CTR:HAR:TL-N-8266-98
REMarum

date:

to: Chief, Examination Division, Connecticut-Rhode Island District
Attn: Ed Kurinsky, Case Manager

from: District Counsel, Connecticut-Rhode Island

subject: [REDACTED] and [REDACTED]
Erroneous Refunds I.R.C. § 7405

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This is in response to your memorandum dated December 9, 1998, whereby you requested our opinion as to whether the Service properly used the erroneous refund provisions to recover refunds erroneously paid to the subject taxpayer. In this case, during the two-year period for recovering erroneous refunds under I.R.C. § 6532(b), the revenue agent began the examination of the claims for refund for the years [REDACTED] and [REDACTED], made adjustments, the taxpayer agreed to the adjustments, the taxpayer executed Forms 870, and the taxpayer made the payments on the erroneous refunds for [REDACTED] and [REDACTED]. We have concluded that the fact that the payment from the taxpayer for the [REDACTED] year was not actually processed by the Service until shortly after the expiration of the two-year period for recovering erroneous refunds does not preclude the Service from retaining the payment. For the [REDACTED] year, the payment was actually processed within the two-year period, and the Service may also retain that payment.

The facts set forth below are summarized from your memorandum:

1. The taxpayer was examined under the Coordinated Examination Program for [REDACTED] and [REDACTED] and the examination was completed in [REDACTED].

2. Agreed adjustments were made to the taxpayer's Research Tax Credit for internal use software.

3. The taxpayer advised the revenue agent that it was planning to file claims for refund for all open years to claim additional credits.

4. In early [REDACTED], the taxpayer provided the revenue agent with copies of the timely filed Forms 1120X (2 years from dates of payments of tax) for the years at issue, [REDACTED] and [REDACTED], details for which were:

Year	Date of Claim	S/L--§ 6501	Claim Amt.	Form 870 Amt.
[REDACTED]	[REDACTED]	[REDACTED]	\$ [REDACTED]	\$ [REDACTED]

The claims for refund were filed just prior to the expiration of the statute of limitations for section 6501 purposes.

5. For [REDACTED], the Service Center on [REDACTED] issued a notice of claim disallowance for \$ [REDACTED]. It issued a refund check for \$ [REDACTED], \$ [REDACTED] of which the examiner determined had been erroneously refunded.

6. For [REDACTED] the Service Center allowed the claim in full and issued a refund check for \$ [REDACTED]. The examiner determined that \$ [REDACTED] had been erroneously refunded.

7. The examiner audited the Forms 1120X for the years [REDACTED] and [REDACTED]. Agreed-upon adjustments were made, and the taxpayer executed Forms 870 on [REDACTED].

8. On [REDACTED], the taxpayer made payments for the agreed-upon adjustments to the [REDACTED] and [REDACTED] Forms 1120X.

9. The 2-year period for bringing a suit to recover an erroneous refund expired on [REDACTED] for [REDACTED] and will expire in [REDACTED] for [REDACTED].

10. The revenue agent did not process the payments until after [REDACTED], and the computer rejected those attempts.

11. Those rejections raised a concern that perhaps the statute of limitations precluded the Service from processing the tax for [REDACTED] and [REDACTED] and, therefore, the only way the Service could keep the payments would be if the taxpayer wanted them

treated as voluntary payments. (The taxpayer's position was that it believed it owed the tax, had in good faith paid the tax, and did not want the payments returned.)

Section 6532(b) provides that the United States may bring a suit to recover an erroneous refund. Such a suit must be begun within 2 years after the making of the refund. The civil action is brought in the name of the United States. Section 7405(b).

In this case, no suit to recover an erroneous refund had to be initiated. Rather, the examiner began his examination of the Forms 1120X for [REDACTED] and [REDACTED] within the 2-year period for recovering erroneous refunds. He made adjustments, the taxpayer agreed to the adjustments, the taxpayer executed Forms 870, and the taxpayer made the agreed-upon payments for [REDACTED] and [REDACTED] all within same 2-year period. We have coordinated with our National Office, which agrees with our conclusion that the fact that the payment from the taxpayer for the [REDACTED] year was not actually processed by the Service until shortly after the expiration of the two-year period for bringing suit to recover erroneous refunds does not preclude the Service from retaining the payment. For the [REDACTED] year, the payment was actually processed within the two-year period, and the Service may also retain that payment.

Since the problem in this case arose over the computer's rejection of the attempts to process the payments for [REDACTED] and [REDACTED], we suggest that you contact a specialist at the Service Center, who may take the necessary action to process the payments.

Please note that this opinion is based upon the facts set forth herein. Should you determine that the facts are different, you should not rely upon this opinion without conferring with this office, as our opinion might change. Further, this opinion is subject to post-review in our National Office. That review might result in modifications to the conclusions herein. Should our National Office suggest any material change in the advice, we will inform you as soon as we hear from that office.

The subject case is assigned to Robert E. Marum of this office, who may be reached at (860) 290-4068 should you have any further questions.

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Assistant District Counsel

By: _____

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Attorney